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Stutz Plumbing, Inc. and Construction & General Laborers' District Council of Chicago & Vicinity. Case 13-CA-39708-1

June 21, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND BARTLETT

The General Counsel in this case seeks summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed on October 10, 2001, by Construction & General Laborers' District Council of Chicago & Vicinity, the Union, the Regional Director issued the complaint on November 27, 2001, against Stutz Plumbing, Inc., the Respondent. The complaint alleges that the Respondent has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On February 4, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On February 7, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that, unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 11, 2002, notified the Respondent that unless an answer was received by January 18, 2002, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the Respondent's failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Forest Park, Illinois, has been engaged in the building and construction business. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at its Forest Park, Illinois facility goods valued in excess of \$50,000 from other enterprises located within the State of Illinois, each of which other enterprises had received these goods directly from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Zygmund Stutz held the position of the Respondent's owner, and has been a supervisor and agent of the Respondent within the meaning of Sections 2(11) and 2(13), respectively, of the Act.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All laborer employees, employed by the Employer at its Forest Park, Illinois facility excluding office clerical employees, guards and supervisors as defined by the Act and all other employees.

Since about January 16, 1996, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and has been recognized as the representative by the Respondent. This recognition has been embodied in a recognition agreement dated January 16, 1996. At all times since January 16, 1996, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

By the terms of the January 16, 1996 recognition agreement, the Respondent agreed to be bound by the collective-bargaining agreements (the "area-wide agreement") between the Union and various employer associations, including, but not limited to, the Builders Association of Chicago and Vicinity.

About June 1, 2001, the Union and the various employer associations reached complete agreement on terms and conditions of employment of the unit employees to be incorporated in a collective-bargaining agreement.

On various dates since June 1, 2001, including July 18 and September 14, 2001, the Union has requested, in

writing, that the Respondent execute a written contract containing the area-wide agreement between the Union and the various employer associations, including, but not limited to, the Builders Association of Chicago and Vicinity.

Since June 1, 2001, the Respondent, by Zygmund Stutz, has failed and refused to execute such a contract.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and thereby has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused since about June 1, 2001, to execute with the Union a written contract containing the area-wide agreement between the Union and the various employer associations, including, but not limited to, the Builders Association of Chicago and Vicinity, we shall order the Respondent, on request, to execute such a contract and to apply the terms of the contract retroactively. We also shall order the Respondent to make the unit employees whole for any loss of earnings or benefits, and for any expenses,¹ resulting from its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Stutz Plumbing, Inc., Forest Park, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Construction & General Laborers' District Council of Chicago & Vicinity as the exclusive collective-bargaining representative of the employees in the unit below by failing and refusing, on request, to execute with the Union a written contract containing the area-wide agreement between the Union and the various employer associations, including, but not limited to, the

Builders Association of Chicago and Vicinity. The unit is:

All laborer employees, employed by the Employer at its Forest Park, Illinois facility excluding office clerical employees, guards and supervisors as defined by the Act and all other employees.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, execute with the Union a written contract containing the area-wide agreement between the Union and the various employer associations, including, but not limited to, the Builders Association of Chicago and Vicinity, and apply the contract retroactively.

(b) Make the unit employees whole for any loss of earnings and other benefits, and for any expenses, attributable to its unlawful conduct, with interest, as set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Forest Park, Illinois, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 1, 2001.

¹ See *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981).

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 21, 2002

Peter J. Hurtgen,	Chairman
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Wilma B. Liebman,	Member
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Michael J. Bartlett,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Construction & General Laborers' District Council of Chicago & Vicinity as the exclusive collective-bargaining representative of our employees in the unit below by failing and refusing, on request, to execute with the Union a written contract containing the area-wide agreement between the Union and the various employer associations, including, but not limited to, the Builders Association of Chicago and Vicinity. The unit is:

All laborer employees, employed by us at our Forest Park, Illinois facility excluding office clerical employees, guards and supervisors as defined by the Act and all other employees.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, execute with the Union a written contract containing the area-wide agreement between the Union and the various employer associations, including, but not limited to, the Builders Association of Chicago and Vicinity, and apply the terms of the contract retroactively.

WE WILL make unit employees whole for any loss of earnings and other benefits, and any expenses, resulting from our unlawful conduct, with interest.

STUTZ PLUMBING, INC.